

## **REMARKS**

Reconsideration of this application and allowance of the amended claims is respectfully requested.

In response to the restriction requirement, applicant's attorney has confirmed the election of claims 9-25 by the cancellation of claims 1-8. Claims generally similar to claims 1-8 are pending in Application Serial No. 10/225,786.

With respect to the formal rejection of claims 10-14 and 21-25, certain amendments have been made to focus on manipulative steps of the process. However, it is submitted that for each of these claims, if they were put into independent form, incorporating limitations of their parent claims, it is believed that there would be no rejection raised by the examiner because of the varying amounts of structural recitation found in the claims. For example, if claim 10 were placed into independent form, incorporating all of the process steps of claim 9, it would remain a claim of the scope of current claim 10 (which is dependent upon claim 9) but would not appear to be subject to a rejection under 35 U.S.C. 112 because of the presence of added structural limitations.

Accordingly, it is submitted that claim 10, and the other rejected claims, are not indefinite, since their scope and content is substantially unchanged from equivalent, independent claims which include the method steps of the parent claims and the structure of the claims rejected by the examiner under 35 U.S.C. 112.

The examiner has also rejected claims 9-25 as "clearly anticipated by the patent to Recchia (6,058,681) in view of Fox (6,030,120) or Day (3,123,279).

It should be added that anticipation under 35 U.S.C. 102(b) requires that the invention be completely disclosed in a single reference. Applicant's attorney is

assuming that the rejection is actually based on 35 U.S.C. 103: obviousness in view of the combination of the three references mentioned.

The applicant of Recchia Patent No. 6,058,681 is the same Michael J. Recchia, Jr. who is the applicant of this present application. If called for, a statement signed by the inventor to this effect can be prepared and submitted.

Recchia, Jr. Patent No. 6,058,681 is not a prior art reference to this application under 35 U.S.C. §102(b). Patent No. 6,058,681 issued on May 9, 2000, while this application claims priority as a divisional application from Recchia, Jr. U.S. Application Serial No. 09/481,211, filed on January 11, 2000, which now is U.S. Patent No. 6,509,429. Clearly, Recchia, Jr. Patent 6,058,681 is not prior art based on 35 U.S.C. 102(b) because the invention was not "patented or described in a printed publication...more than one year prior to the date of application for patent in the United States". The effective filing date of this present application is January 11, 2000, and the date of patenting of Patent No. 6,058,681, is May 9, 2000, which is actually subsequent to the effective filing date of this application.

Furthermore, the Recchia, Jr. Patent 6,058,681 is not prior art under 35 U.S.C. 102(a) because it does not constitute an invention that was "...known or used by others in this country, or patented to describe in a printed publication in this foreign country, before the invention thereof by the applicant for patent..." The term "by others" is not met, since Mr. Recchia is inventor and applicant of both Patent No. 6,058,681 and this present application.

Accordingly, withdrawal of Patent No. 6,058,681 as a prior art reference is requested.

Turning to Fox et al. U.S. Patent 6,030,120 and Day U.S. Patent 3,123,279, it is submitted that neither of these references show a bag, as stated in claim 9, as amended, where an upper end of the upwardly folded portion of the solid-wall thermoplastic sheet is sealed to a lower end of the mesh sheet to form a header section extending away from the mesh sheet. A purpose of the header section, as shown in Figs. 2 and 3, is to serve as a receptacle for the indicia strip 20, which can serve as a label for the bag. See particularly page 7 of the specification for a description and support.

It is submitted that the formation of such a header is not disclosed in either Fox et al. or Day. In Fig. 4 of the Fox patent, the mesh extends completely to the bottom fold 20 of the plastic wall, contrary to claim 9, where the header section is "extending away from said mesh sheet. In Day, it is submitted that there is no teaching of forming a header section which could receive an indicia strip or the like. Also, Day fails to disclose the language of claim 9: "...sealing an upper end of the upwardly folded portion of said solid-wall thermoplastic sheet to a lower end of said mesh sheet." In Day, the loose portion of folded film 3 above the seal line 4 is actually larger than the folded portion below the seal line.

Independent claim 20 carries similar limitations.

Furthermore, all the method claims of this application carry method limitations which are in no way found in Fox et al. and Day.

In view of the above, allowance of the claims is respectfully requested.

With respect to the examiner's first paragraph on page 3 of the Office Action, indeed the cross strands mentioned do refer to those that are inherently present in a

mesh or netting. It is believed that the term "mesh" supports claims 14, 24 and 25, but if the examiner prefers, the specification can be amended to include the language of those claims, which, of course, are originally filed claims and thus form part of the disclosure of this application, so such amendment would not constitute new matter.

The newly added claims are believed to be clearly disclosed by the original disclosure of this application. Independent claim 27 includes elements of claims 9, 12, and 17.

In view of the above, allowance of the claims is respectfully requested.

As a further matter, the examiner has made no written record of his consideration of the Information Disclosure Statements filed by applicant on November 21, 2002 and October 12, 2001. It is requested that these references be considered, and that such consideration be acknowledged in the usual manner. If those Information Disclosure Statements have been lost, new copies can be provided by applicant's attorney.

Also, a further Information Disclosure Statement is enclosed, including references which have been cited in copending Application Serial No. 10/225,786, in an Office Action dated November 5, 2003. A check for the \$180.00 reference citation fee is enclosed, as well as a PTO Reference Citation Form and copies of the references.

Respectfully submitted,

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I hereby certify that this correspondence is being deposited with the U.S. Postal Service as First Class Mail in an envelope addressed to: Mail Stop: Non Amendment Fee, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on March 30, 2004.

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